



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case reference** : **LON/00AE/LSC/2017/0358**

**Property** : **84, Empire Court, Wembley HA9  
0AQ**

**Applicant** : **LKB Investments Limited**

**Representative** : **N/A**

**Respondent** : **Valley Consolidated Limited**

**Representative** : **N/A**

**Type of application** : **For the determination of the  
reasonableness of and the liability  
to pay a service charge**

**Tribunal members** : **Judge Hargreaves  
Clifford Piarroux**

**Date and venue of  
hearing** : **10 Alfred Place, London WC1E 7LR  
11<sup>th</sup> January 2018**

**Date of decision** : **11<sup>th</sup> January 2018**

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**DECISION**

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## **Decisions of the Tribunal**

- (1) The Tribunal determines that the sums particularised in paragraphs 7. (i) and (ii) of the Applicant's statement of case at p113 ie (i) £870.77 service charge on account for the period 1/7/16 to 31/12/16 and (ii) £319.90 reserve fund contribution in respect of the period 1/7/16 to 31/12/16 are reasonable and payable by the Respondent.
- (2) In respect of the claim for legal and other costs the sum allowed as reasonable and payable by the Respondent is £270 plus £54 VAT plus £12 disbursements totalling £336.
- (3) The Tribunal makes the determinations as set out under the various headings in this Decision.
- (4) The Tribunal makes no order under section 20C of the Landlord and Tenant Act 1985.
- (5) Any other costs issues will have to be referred to the county court, as will questions as to outstanding ground rent and interest on unpaid arrears.

## **REASONS**

1. All page references are to those in the trial bundle prepared by the Applicant. Relevant legislation is annexed below.
2. In order to understand our decision it is necessary to set out the procedural background.
3. Some time in March 2017 the Applicant issued particulars of claim against the Respondent in respect of alleged arrears of service charges, ground rents, interest and legal costs, the principal sum amounting to £3157.09 (see p1-4 in particular).
4. The Tribunal has no jurisdiction to deal with ground rents (£130) or statutory interest.
5. The Respondent indicated an intention to defend (p72).
6. The Respondent's defence (p74) basically put the Applicant to proof, contended its accounting was inaccurate, but at no point pleaded that

any part of the claim was in terms of service charges, “unreasonable” within the meaning of ss19/27A LTA 1985.

7. The county court decided that the claim was suitable to allocation to the small claims track. It was transferred to the county court at Central London for allocation. On 11<sup>th</sup> September 2017 the claim was stayed save as to the claims in respect of service charges and service fund calculations, which were transferred to the Tribunal (p86).
8. Lengthy directions were given by the Tribunal on 9<sup>th</sup> October 2017 (p87). The issues were defined at p88. The Judge noted that at that stage “The Respondent does not raise any challenge to the reasonableness of the charges themselves and does not challenge particular items.”
9. That still appears, in broad terms, to be the case if we analyse (as we have), the Respondent’s pleading for the Tribunal, at p96-98. Its case is arguably all about accounting and contains an agreement to pay (or at the very least an indication that it would pay) certain items marked as “will pay” on p98 and demanding more detail in respect of the remaining items. But there is still no positive pleaded case as to “unreasonableness”.
10. The parties’ respective positions have been helpfully analysed by the Applicant’s Tribunal pleadings, particularly paragraph 7 at p113. Of items 7(i)-(v) only items (i) (ii) (v) are in dispute.
11. Items 7(i) and (ii) relate to the figures of £870.77 and £319 (service charges on account and reserve fund contribution). The Applicant pleads at paragraph 13 (p115) that “The Respondent does not argue that the service charge on account and the reserve fund contribution for the period 1/7/16 to 31/12/16 is unreasonable. Instead the Respondent argues that the amount in question has been paid and makes reference to a payment to £1193.47 that credited his account on 11<sup>th</sup> November 2017”.
12. This Tribunal is concerned with reasonableness. It is unable to deal, particularly on a paper determination where the documents are presented in the way we see them, with what is essentially an accounting dispute.
13. The Respondent has failed to offer any case, convincing or otherwise on the reasonableness of the service charges it has refused to pay. Given the documentation provided by the Applicant (including accounts and a budget) the absence of a formal challenge on reasonableness together

with evidence to back it up is fatal to the Respondent's chances of success. We therefore conclude that the amounts particularised in paragraph 7(i) and (ii) of the Applicant's statement of case, are reasonable and payable by the Respondent.

14. That leaves the legal charges. We can consider their "reasonableness" if they are administration charges. They are payable pursuant to paragraph 14 of the Fourth Schedule to the lease (see eg p54). By the time the Applicant pleaded its case in the Tribunal its original claim for £732 was reduced to £534 (being up to the date of issue). We disallow the sum claimed in respect of the actual s146 notice which – if drafted – is premature. We consider the charges in stage 1, 2 and 5 to be reasonable and payable (£336).

15. In the circumstances an order under s20C is inappropriate.

Judge Hargreaves

Clifford Piarroux

11<sup>th</sup> January 2018

## Appendix of relevant legislation

### Landlord and Tenant Act 1985 (as amended)

#### Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
  - (a) "costs" includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

#### Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  - (a) only to the extent that they are reasonably incurred, and
  - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

#### Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
  - (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,

- (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

## **Section 20**

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
  - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
  - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

### **Section 20B**

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

### **Section 20C**

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made—
  - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
  - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

## **Commonhold and Leasehold Reform Act 2002**

### **Schedule 11, paragraph 1**

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.



- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
  - (a) specified in his lease, nor
  - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

**Schedule 11, paragraph 2**

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

**Schedule 11, paragraph 5**

- (1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
  - (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,
  - (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
  - (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
  - (a) in a particular manner, or

(b) on particular evidence,  
of any question which may be the subject matter of an application  
under sub-paragraph (1).